IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 72 of 2004 (S/B)

Jagdish Chand Nainwal S/o Late Sri Lokmani
Parmanent R/o Ginti Gaon
P.O. Kotabagh
District Nainital **... Applicant**

Vs

1. Union of India through the
   Secretary, Ministry of Defence
   Government of India, New Delhi
2. The Director Central of Military Farm
   Army Headquarters, West Block, R.K. Puram
   New Delhi
3. The Adjutant Central
   A.G.'s Branch, Army Headquarters,
   West Block, R.K. Puram, New Delhi
4. Dy. Director of Military Farms, Central Command
   Headquarters Lucknow
5. Officer-in-Charge, Military Farm Pithoragarh
6. Central Administrative Tribunal
   Additional Bench Allahabad

... Respondents

Sri J.C. Pandey, learned counsel for the State/appellants
Ld. standing counsel for Union of India for respondents

Hon'ble P.C. Verma
Hon'ble B.C.Kandpal, J.

By means of this writ petition the petitioner is challenging the order dated 22.12.2003 passed by respondent No. 6 – Central Administrative Tribunal, Additional Bench, Allahabad in Review Application No.124 of 2003 as well as order dated 25.10.2002 passed by Tribunal in O.A. No.970/98 and order dated 31.87.1998 passed by Respondents No.5-Officer Incharge, Military, Farm, Pithoragarh, terminating the services of the petitioner.

2. The review petition was decided by the learned Tribunal vide order dated 22.12.2003. By way of this

review petition, the petitioner had sought the review and recall of the ex-parte order dated 25.10.2002 passed in O.A. No. 970 of 1998 by the Central Administrative Tribunal. Since the petitioner was working at Pithoragarh, therefore, original application of the conducting the case of the applicant/petitioner is a practicing lawyer at Allahabad. Since he did not come to Nainital, therefore, the case was dismissed and the counsel did not inform the client within time, therefore, the period of one year was elapsed on 12.11.2003. Therefore, the Tribunal rejected the review petition being time barred by near about one year on the ground that the counsel who conducted the case initially did not file the review petition and the review petition was filed in the month of November 2003 by one Sri V.B. Sirohi – Advocate.

3. From the record it comes out that the certified copy of the order was applied on 10.11.2003 by Sri S.D. Tiwari – Advocate and the copy of the same was handed over on 13.11.2003 and thereafter, the review petition was filed. Thus it is apparently evident that the petitioner was not informed timely about the ex-party judgment rendered at Nainital and when he came to know about the dismissal of the case he applied for certified copy on 10.11.2003 and after receipt of the certified on 13.11.2003, he filled an O.A. within the month of November, therefore, the review petition was filed within the time from the date of knowledge.

4. The statement of the applicant that he was informed by his counsel about the filing of the A.O. on 12.11.2003 was made on the basis of non-communication by his counsel and that could not be

taken as a ground for rejecting the review petition as the certified copy was applied on 10.11.2003 itself. Therefore, the rejection of application of the applicant for condonation of delay is erroneous and cannot be sustained in the eye of law and the dismissal of review petition is also liable to be set aside and is hereby set aside.

5. The petitioner has further made a prayer to quash the ex-parte judgment dated 25.10.2002 passed by the Central Administrative Tribunal. The petitioner was engaged as a casual labour in the Military Farm, Pithoragarh on 01.05.1989 and he worked in the respondents' establishment without any break upto 31.08.1998 and his services were terminated on 31.08.1998. This termination order was challenged before the Central Administrative Tribunal in O.A. No. 970 of 1998 as well as before this Court.

6. The petitioner submitted that the petitioner's services were terminated by way of illegal retrenchment on the ground of reduction of strength in the establishment on account of reduction in volume of work. Alongwith two other persons, the service of the petitioner were terminated on the same ground and their O.As. No. 1112 of 1990 was dismissed on the ground that due notices were given to them including the retrenchment compensation, therefore the retrenchment order was valid. Following the same reasoning, this O.A. of the petitioner was also dismissed.

7. It is not in dispute that the volume of work had reduced and retrenchment of the three employees was made. It has categorically been mentioned in the termination order as and when the work will be available,

the petitioner and others will be engaged on work as per availability of work according to their seniority. Thus, in our opinion the judgment of the Tribunal does not suffer with any infirmity.

8. Accordingly, the writ petition is dismissed so far as it relates to the prayer for quashing of termination order dated 14.8.1998 passed by Respondent No.5 and judgment of the Central Administrative Tribunal Tribunal dated 25.10.2002, (Annexure No. 7 to the writ petition). No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

May 19, 2006.
R.Dang